IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.W.P. No.16621 of 2005
Date of decision: 01.12.2006

(M/s) Sumer Chand Sudhir Kumar, Yamunanagar, (Haryana).

-----Petitioner.

Vs.

The State of Haryana and another.

-----Respondents.

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE RAJESH BINDAL

Present: Mr. K.L. Goyal, Advocate
for the petitioner.

Ms. Ritu Bahri, DAG, Haryana
for the respondents.

ORDER:

This petition challenges the order dated 14.07.2005 (Annexure P-4), rejecting the application of the petitioner dated 14.07.2005 seeking to opt out of the lump sum scheme of payment of tax, on the ground that tax on plywood and ply board has been revised from 12% to 12.5% w.e.f. 01.07.2005 vide notification dated 30.06.2005.

Case of the petitioner is that under Section 9 of Haryana VAT Act, 2003 (for short, "the Act"), the State Government is empowered to accept from any class of dealers, a lump sum payment linked with production capacity or some other suitable measure of extent of business, calculated at a flat rate of gross receipts of business or otherwise, as provided for under the Rules framed for the purpose, in lieu of tax payable under the Act. In accordance with the said provision, under Rule 51 of the Haryana VAT Rules, 2003 (for short, "the Rules"), lump sum scheme was introduced in respect of plywood manufacturers. Rule 46 of the Rules contains general provisions in respect of lump sum dealers and Clause (3) thereof, provides that once an option to pay lump sum has been exercised, the same shall

not be withdrawn unless the rate of lump sum tax or rate of tax on commodity concerned is revised.

The petitioner applied to opt out of the lump sum scheme on the ground that rate of tax has been revised from 12% to 12.5% and the said application was rejected on the ground that the petitioner was not prejudiced by the revision of rates of tax. Section 9 of the Act, is reproduced as under:-

"**SECTION – 9**

[PAYMENT OF LUMPSUM IN LIEU OF TAX]

(1) The State Government may, in the public interest and subject to such conditions as it may deem fit, accept from any class of dealers, in lieu of tax payable under this Act, for any period, by way of composition, a lump sum linked with production capacity or some other suitable measure of extent of business, or calculated at a flat rate of gross receipts of business or gross turnover of purchase or of sale or similar other measure, with or without any deduction therefrom, to be determined by the State Government, and such lump sum shall be paid at such intervals and in such manner, as may be prescribed, and the State Government may, for the purpose of this Act in respect of such class of dealers, prescribe simplified system of registration, maintenance of accounts and filing of returns which shall remain in force during the period of such composition.

(2) No dealer in whose case composition under sub-section (1) is in force, shall issue a tax invoice for sale of goods by him and no dealer to whom goods are sold by such dealer shall be entitled to any claim of input tax in respect of the sale of the goods to him.

(3) A dealer in whose case composition under sub-section (1) is made and is in force may, subject to such restrictions and conditions, as may be prescribed, opt out of such composition by making an application containing the prescribed particulars in the prescribed manner to the assessing authority, and in case the application is in order, such composition shall cease to have effect on the expiry of such period after making the application as may be prescribed."

Relevant provisions of Rules 46 and 51 of the Rules read as under:-

"**"RULE 46**

[GENERAL PROVISIONS IN RESPECT OF LUMP SUM DEALERS]

(Section 9)

(1) Any lump sum payable under the Act and these rules shall be deemed to be tax for the purpose of application of provisions relating to assessment, use of declarations and maintenance of record relating thereto, levy of interest, imposition of penalties for offences committed under the Act, and recovery.

(2) The rates of lump sum applicable under the schemes of composition of tax made under the Act of 1973 as part of the 1975 Rules or notified under the said Act in respect of brick kiln owners, lottery dealers, Halwaii, contractors and ply-board manufacturer shall continue to be in force with effect from the appointed day unless changed in the rules in this chapter and where the rate(s) of lump sum has/have not been changed in respect of any class of lump sum dealers no fresh option for composition shall be required to be made by a lump sum dealer of that class and the provisions of this chapters shall apply to him automatically.

(3) Once an option to pay lump sum has been exercised it shall not, save under rule 49, be withdrawn until the rate(s) of lump sum is/are revised or the rate of tax on goods which the lump sum dealers deal in is/are revised and the lump sum dealer makes an application within fifteen days of the date of the publication of the notification(s) issued in this behalf that he does not wish to pay lump sum at the revised rate(s) or continue under the lump sum scheme, as the case may be.

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"RULE – 51

[LUMP SUM SCHEME IN RESPECT OF PLY-BOARD MANUFACTURER (Section 9)

(1) Subject to the other provisions of this rule, a ply-board manufacturer may, by exercising option in the manner given in sub-rule (6), at any time, offer to make payment of lump sum in lieu of tax payable by him under the Act on sale of ply-board manufactured by him and waste products arising therefrom, at the rate(s) mentioned below:-

TABLE

Serial No.	Press size	Rate of lump sum per press per annum
1.	8’ x 4’ x 10’	Rs.9.00 lakh
2.	8’ x 4’ x 7	Rs.6.30 lakh
3.	6’ x 4’ x 10	Rs.6.75 lakh
4.	6’ x 4’ x 7	Rs.4.73 lakh
5.	4’ x 4’ x 10	Rs.3.21 lakh
6.	4’ x 4’ x 7	Rs.2.25 lakh

where an 8x4x10 press is designed to make 10 number ply-boards each measuring 8 feet by 4 feet i.e. 320 square fet ply-board in single operation and presses of other sizes are designed to make ply-board in the same proportion:

Provided that annual rate of lump sum in respect of press of any other size not tabulated above shall, if the press is designed to make ply-boards of size not exceeding 4’x4’ i.e. 16 square feet per piece be computed @ Rs. 2008.93 per square feet else @ Rs.2812-50 per square feet, rounded off to nearest thousand in each case:

Provided further that lump sum for any additional press of the same or lower size shall be computed at one-half of the full rate tabulated above.

(2) An industrial unit availing the benefit of deferment of payment of tax if chooses to opt for payment of lump sum, shall pay lump sum at one-half of the rate(s) specified in sub-rule (1) for the remaining period of deferment and thereafter, such unit shall pay lump sum for the next at least five years at the full rate(s) specified under the said sub-rule and if the unit is closed down in the mean time, it shall be liable to pay up the whole of the amount of benefit availed by it by twelve equal monthly instalments.

Note – For the purpose of computing the period of deferment of an industrial unit covered under the foregoing sub-rule, tax benefit shall be calculated at the full rate(s) specified in sub-rule (1).

(3) The tax paid in any quarter/month on goods purchased for use in manufacture of ply-board may be adjusted with the lump sum payable for the next quarter/month provided an account of purchase of such goods and their use in manufacture is maintained and corresponding information is furnished in the returns:

Provided further that the proportion of adjustment on account of goods other than wood and wood products for any tax period shall not exceed twelve per cent of the total adjustment allowed for that period.

Illustration:- Out of a claim of tax paid of Rs.2,06,000/- in respect of goods used in manufacture, Rs.1,76,000/- relate to wood and wood products and Rs.30,000/- to other goods, the claim allowed shall be Rs.2,00,000/- - Rs.1,76,000/- in respect of wood and wood products and Rs.24,000/- in respect of other goods.

(4) A ply-board manufacturer in whose case composition under this rule is made and is in force shall file the returns under the Central Act as if no composition is in force and shall pay tax due according to such returns after adjusting the amount of lump sum payable for the return period at the rate(s) given in sub-rule(1).

(5) The composition made under this rule shall have no effect on liability to pay tax under the Act or the Central Act on resale of goods.

(6) A ply-board manufacturer, desirous of making offer of composition, shall make option in the following form of application and furnish the same either in person or through his authorized agent to the appropriate assessing authority.

(7) A ply-board manufacturer liable to pay lump sum may make use of declarations in Form VAT-D1 or in Central form C for making purchase of goods at lower rate of tax or central sales tax, as the case may be, for use in manufacturing of goods for sale. He shall not be required to make use of declaration(s) in Form VAT-D3 for carrying goods. He shall be required to furnish quarterly returns in Form VAT-R11 within a month of the close of the quarter.

(8) The Commissioner or an officer appointed under sub-section (1) of section 55 to assist him may visit business premises of a ply-board manufacturer liable to pay lump sum for verification of –

(i) Number of size(s) of press(es);

(ii) Date of liability to pay tax or cessation of liability; and

(iii) Any other information, which the manufacturer has given to the assessing authority in relation to his business."

Learned counsel for the petitioner submits that on a revision of the rate of tax, the petitioner had a statutory right to opt out of lump sum scheme irrespective of the question whether the petitioner was prejudiced from revision of rate of tax or not and once the petitioner sought to opt out his option, the rejection of his application was in violation of statutory rules, entitling the petitioner to opt out of the scheme.

Learned counsel for the State is unable to show as to how in view of express provision in the Rules, the petitioner can be forced to continue in lump sum scheme. Learned State counsel submitted that lump sum scheme has been upheld by the Hon'ble Supreme Court in ***State of Kerala and another*** **v.** ***Builders Association of India and others*** (1997) 104 STC 134 in the context of Kerala General Sales Tax Act, 1963.

We do not find any relevance of the said judgment for the decision of the present case, as the petitioner had not challenged introduction of the lump sum scheme. The contention regarding vires of the provisions of the Rules regarding bar on change of option is not pressed. He only seeks to opt out of the said scheme in accordance with the Rules on account of revision in the rate of tax. From a perusal of Rule 46(3) of the Rules, we find that a dealer has a right to change his option on two contingencies, firstly, when the rate of lump sum is revised and secondly, when the rate of tax on the commodity, in which the dealer deals in, is revised. The words used in the Rules have to be given their plain meaning. If that be so, there is no condition that the revision of rate should prejudice the dealer only then he is permitted to change his option.

In view of above, we allow this petition, quash the impugned order (Annexure P-4) and direct that the petitioner will be entitled to opt out of the lump sum payment scheme once there is a change in the rate of tax on the commodity. However, to avoid any possible difficulties in implementation of the order, keeping in view different schemes of taxation, we direct that the petitioner shall be entitled to the benefit of change in option from the next quarter commencing from 01.01.2007.

The writ petition is disposed of in the manner indicated above.

(ADARSH KUMAR GOEL)
JUDGE

December 01, 2006 **(RAJESH BINDAL)**
ashwani **JUDGE**